

DOCKET FILE COPY ORIGINAL

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

SEP 16 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter)

CC Docket No. 95-116

Telephone Number Portability)

REPLY COMMENTS OF SBC COMMUNICATIONS INC.
TO FURTHER NOTICE OF PROPOSED RULEMAKING

SBC COMMUNICATIONS INC.

James D. Ellis
Robert M. Lynch
David F. Brown
175 E. Houston
Room 1254
San Antonio, Texas 78205

ATTORNEYS FOR SBC
COMMUNICATIONS INC.

Durward D. Dupre
Mary W. Marks
One Bell Center
Room 3558
St. Louis, Missouri 63101

ATTORNEYS FOR SOUTHWESTERN
BELL TELEPHONE COMPANY

Bruce Beard
17330 Preston Road
Suite 100A
Dallas, Texas 75252

ATTORNEY FOR SOUTHWESTERN
BELL MOBILE SYSTEMS

September 16, 1996

No. of Copies rec'd
List A B C D E

046

Table of Contents
Reply Comments of SBC Communications Inc.
To Further Notice of Proposed Rulemaking
CC Docket No. 95-116

<u>Subject</u>	<u>Page</u>
Summary	i
I. INTRODUCTION	1
II. DISCUSSION	3
A. THE CONSENSUS IS THAT “ALL TELECOMMUNICATIONS CARRIERS” WAS INTENDED TO MEAN ALL “TELECOMMUNICATIONS CARRIERS”	3
B. FEDERALLY MANDATED NUMBER PORTABILITY REQUIRES AN EXERCISE OF EXCLUSIVE FEDERAL JURISDICTION TO INSTITUTE A FEDERAL, COMPETITIVELY NEUTRAL, RECOVERY MECHANISM	5
1. THE FCC HAS “EXCLUSIVE JURISDICTION” OVER NUMBER PORTABILITY	5
2. COMPETITIVE NEUTRALITY REQUIRES ALLOCATION AND RECOVERY OF NUMBER PORTABILITY COSTS	7
3. COSTS SHOULD BE ALLOCATED ON THE BASIS OF NATIONWIDE “ELEMENTAL ACCESS LINES”	8
a. Revenues--Gross Or Net--Are A Problematic Allocator	8
b. Nationwide, Not Regional or State, Cost Allocation and Recovery Is Appropriate	9
4. SBC’S ALLOCATION AND RECOVERY MECHANISM	12
5. THE NATURE OF THE END-USER CHARGE: FEDERAL, UNIFORM, MANDATORY, EXPLICIT	14
C. UNNECESSARY COSTS SHOULD BE AVOIDED.....	15
III. CONCLUSION	16

SUMMARY

Section 251(e)(2) requires unambiguously that “the cost of establishing telecommunications . . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.” Although there are some dissenters, most commenters agree that Congress has made the judgment that all telecommunications carriers and their customers should bear the cost of number portability because they all benefit from the service and price competition anticipated to be stimulated by portability. This judgment is further bolstered by the fact that calls--including virtually every interexchange call--made by consumers, whether inside, adjacent to, or attempting to reach number portability areas, will require the use of number portability capabilities in increasing proportions. Congress did not narrowly define the class of contributing telecommunications carriers through specific legislative language, and all telecommunications carriers should bear the cost.

Many commenters suggested methods of allocating the costs of implementing number portability in supposedly competitively neutral manners. Some commenters suggested using some form of local exchange access line calculation as an allocator; but as SBC and others point out, this results in far less than “all telecommunications carriers” bearing the cost of number portability, despite the alleged need of all telecommunications carriers for the service and the undisputed need for all carriers to use the number portability facilities to complete some or all of their calls once the structure is implemented. Some of the suggested allocations include the use of revenues or profits, either gross or net, but as Airtouch and SBC, among others, point out, the

use of revenues or profits as an allocator, particularly if the Commission decides to measure them on something less than an all-services and nationwide basis, leaves the industry and the Commission with an enormous administrative problem.

As SBC urged in its Comments, to eliminate the distortions and administrative difficulties inherent in revenue-based methods of number portability cost allocation, while meeting the Commission's standards for "competitive neutrality," the allocation of costs should be based upon nationwide "elemental access lines" ("EALs") and recovered through a cost fund linked to a mandatory, averaged, uniform, and explicit end-user charge. As SBC pointed out in its Comments, this approach takes into account the various telecommunications product submarkets and customer-perceived uses of the local exchange line associated with the potentially ported number by dividing it into the presubscribed "sub-elements" that may be provided by separate carriers after full implementation of the 1996 Act: (1) local or telephone exchange service, (2) intraLATA toll service, and (3) interLATA toll service.

The application of this allocation would require the NANC, or its designee, to be responsible for administering a number portability cost fund (the "Fund Administrator"). Under SBC's plan, the Fund Administrator would have the duty to accumulate and allocate all nationwide Type 1 and Type 2 number portability costs in a cost fund. The Fund Administrator would then divide the total costs by the national total number of EALs to determine an EAL charge per end user for each service. The resulting end-user charge per EAL would be federally mandated and assessed by all carriers on a uniform, mandatory, explicit, monthly basis to all end-user customers. Revenues from the end-user EAL charge would be collected by the carriers, returned to the fund, and disbursed to all carriers on the basis of reported and validated costs.

As SBC and others urge, without a mandatory, uniform, explicit charge levied on all users, customers could be encouraged to switch carriers based on the existence or non-existence of a number portability charge. Not only would this distinction provide certain carriers with a competitive advantage, it would fail to meet the Commission's test for competitive neutrality since ILEC customers would be saddled with a multi-billion dollar implicit subsidy for the benefit of new entrants and their customers. SBC's proposed mechanism is the essence of competitive neutrality, resulting in the full carriage of number portability costs by all telecommunications carriers in a manner that neither encourages nor discourages the movement of telecommunications consumers from one provider to another.

As numerous parties urge, therefore, the Commission must require that all number portability costs be both allocated among all telecommunications carriers and recovered from end users on a competitively neutral basis. This requires that the Commission mandate a common fund and a uniform charge to end users of all telecommunications carriers as SBC proposes.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	§	
Telephone Number Portability	§	CC Docket No. 95-116

**REPLY COMMENTS OF SBC COMMUNICATIONS INC.
TO FURTHER NOTICE OF PROPOSED RULEMAKING**

SBC Communications Inc. ("SBC") files these Reply Comments by its attorneys and on behalf of its subsidiaries, including Southwestern Bell Communications Services, Inc. ("SBCS"), Southwestern Bell Telephone Company ("SWBT"), and Southwestern Bell Mobile Systems, Inc. ("SBMS"), in response to Comments filed pursuant to the Commission's First Report and Order and Further Notice of Proposed Rulemaking released on July 2, 1996 (the "FNPRM") requesting comments on long-term number portability costs and recovery.

I. INTRODUCTION

The implementation of number portability will allow consumers to select among service providers without requiring a change of telephone numbers. Many commenters throughout this proceeding have contended that competition in the local exchange market will succeed only with number portability in place. Congress recognized, however, and this Commission must acknowledge, that the implementation of number portability will cause substantial costs to be incurred. This proceeding must succeed at correctly establishing the manner in which those costs are to be allocated among and recovered by all telecommunications carriers on a competitively

neutral basis. SBC has proposed a plan that permits such an allocation and recovery.

As pointed out in its Comments, SBC proposes that the number portability cost allocation process should be based upon nationwide “elemental access lines” (“EALs”) with cost recovery made through a national cost fund linked to a mandatory, averaged, uniform, and explicit end-user charge. SBC’s approach takes into account the various telecommunications product submarkets and customer-perceived uses of the local exchange line associated with the potentially ported number by dividing that line into presubscribed “sub-elements,” i.e., (1) local or telephone exchange service, (2) intraLATA toll service, and (3) interLATA toll service. This method of allocation accommodates the possibility that each of the sub-elements may be provided by a separate carrier after full implementation of the 1996 Act.

Under SBC’s proposal, the North American Numbering Council (the “NANC”), or its designee, is made responsible for administering a number portability cost fund (the “Fund Administrator”). The Fund Administrator will accumulate telecommunications carriers’ nationwide Type 1 and Type 2 costs¹ in a number portability fund. Captured costs will then be divided by the national total number of EALs to establish a number portability cost allocation for each telecommunications carrier and a charge per end user for each service. The resulting charge would be federally mandated and assessed by all carriers on a uniform, explicit, and monthly basis

¹Type 1 costs include, inter alia, start up and ongoing costs for database administration, regional (or state) service management systems (“SMSs”), initial loading of databases, and uploads/updates. See USTA Comments at 10.

Type 2 costs include, inter alia, start up and ongoing costs for LNP-direct modifications to signaling control points (“SCPs”) (includes downloads from SMS), SS7 links, signaling transfer points (“STPs”), signaling transfer point ports, signaling switching points (“SSPs”) (hardware), LIDB modifications, LRN software, local SMSs, operator switches, operations support system (“OSS”) upgrades, trunk additions/rearrangements, engineering, testing, new data translation needs, employee training, customer service, and repairs. USTA Comments at 11.

to all end-user customers. Revenues from the charge would be collected by the carriers, submitted to the fund administrator, and returned to all carriers on the basis of their previously reported and validated costs. SBC's proposed mechanism is the essence of competitive neutrality, resulting in the full assessment of number portability costs to all telecommunications carriers in a manner that neither motivates nor discourages the movement of telecommunications consumers from one provider to another.

II. DISCUSSION

A. THE CONSENSUS IS THAT "ALL TELECOMMUNICATIONS CARRIERS" IS INTENDED TO MEAN ALL TELECOMMUNICATIONS CARRIERS

As Bell Atlantic and numerous other commenters point out, "the statute could not be more clear that all telecommunications carriers must bear [number portability] costs."² A minority of commenters contend that, notwithstanding the express statutory language, individual carriers should absorb their network costs because to require "all telecommunications carriers" to contribute to the recovery of those costs is a legacy of a regulated monopoly environment.³ These commenters also contend that notwithstanding this explicit Congressional directive, cost recovery has no place in the competitive environment envisioned by the 1996 Act.⁴ Instead, these carriers contend that while number portability is a prerequisite to the existence of the competitive environment, even in the absence of demonstrated market demand, the large base of customers of

²Bell Atlantic Comments at 4 (emphasis added). See also NYNEX Comments at 5; Bell South Comments at 1-2; Pacific Telesis Comments at 6-7; Colorado Public Utility Commission and Colorado Office of Consumer Counsel ("CPUC") Comments at 5-6.

³See e.g., MFS Comments at 2-3.

⁴See MFS Comments at 2-3.

incumbent local exchange carriers (“ILECs”) can comfortably bear the additional costs.⁵ Briefly put, as recipients of ported customers, these carriers would have ILECs’ remaining customers bear the implicit subsidy of the billions of dollars expended for the benefit of new entrants, while the new carriers themselves are required only to incur costs to implement number portability which are unquestionably many orders of magnitude smaller.⁶ Similarly, while some carriers urge that the Commission leave the bulk of the number portability costs with the carrier that incurs them,⁷ to do so would be to render meaningless the statutory language that number portability costs be recovered from “all telecommunications carriers.” The 1996 Act clearly rejects these arguments.

Some commenters contend that only local service providers or only telecommunications carriers operating in areas where number portability is “available” should be required to contribute to number portability cost recovery.⁸ This theory, too, flies in the face of Congressional intent. Many different definitions could have been used to narrow the universe of “telecommunications carriers” to something less than “all,”⁹ had Congress so desired.¹⁰ It did not modify the definition of “all telecommunications carriers” in any fashion.

There are two necessary corollaries to the principle that “all” means “all,” under the

⁵See AT&T Comments at 13.

⁶See, e.g., California Department of Consumer Affairs (“CDCA”) Comments at 20-21.

⁷See, e.g., MFS Comments at 2-3.

⁸See, e.g., MCI Comments at 3-5; CDCA Comments at 13-14.

⁹See e.g., MCI Comments at 3; Sprint Comments at 6; TRA Comments at 5.

¹⁰See SBC Comments at 3-4.

Telecommunications Act of 1996 (the “1996 Act”).¹¹ First, there are some carriers who must bear the cost of number portability, although they themselves do not incur direct costs of deployment,¹² and second, there are some carriers that must bear the cost of number portability even if neither they nor their customers have an immediate need to use number portability to port their own numbers.¹³ As CDCA points out, at least for the first few years of competition, despite their massive expenditures for implementation, ILECs are not likely to reap significant benefits from number portability; accordingly, the benefits of number portability will not fall evenly across all telecommunications carriers. If not spread across all telecommunications carriers as required by law, ILECs--and consumers that remain with ILECs--would bear disproportionately the cost of number portability for the benefit of new entrants. This is not competitively neutral.

As a matter of statutory drafting, Congress could have left the recovery of number portability costs to the carriers that incur them. Congress did not. The costs of number portability must be borne by all telecommunications carriers on a competitively neutral basis.

**B. FEDERALLY MANDATED NUMBER PORTABILITY REQUIRES AN
EXERCISE OF EXCLUSIVE FEDERAL JURISDICTION TO INSTITUTE A
FEDERAL, COMPETITIVELY NEUTRAL, RECOVERY MECHANISM**

**1. THE FCC HAS “EXCLUSIVE JURISDICTION” OVER NUMBER
PORTABILITY**

Section 251(b)(2) states that LECs are to provide, “to the extent technically

¹¹Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, to be codified at 47 U.S.C. §§ 151 et seq. (all citations to the 1996 Act will be to the 1996 Act as it will be codified in the United States Code). The 1996 Act amended the Communications Act of 1934 (“Communications Act”).

¹²USTA Comments at 14.

¹³See U.S. West Comments at 22.

feasible, number portability in accordance with requirements prescribed by the Commission.”¹⁴

Section 251(e)(2) requires that the costs of number portability, together with those of establishing telecommunications numbering administration arrangements, must be “borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”¹⁵

The Commission’s jurisdiction is further fixed by Section 251(e)(1), which provides that “the Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States.” Although tempered by the continuation of independent state jurisdiction over local exchange service rates, where Congress has designated exclusive jurisdiction, the Commission should exercise that jurisdiction.¹⁶

In this instance, the exercise of federal jurisdiction is reasonable. Number portability affects both state and federal jurisdictions.¹⁷ Single-state, regional, or national databases, which may be necessary for the implementation of number portability, will be used to complete all calls, not just local calls and not just the calls of telecommunications carriers located in the area covered

¹⁴Section 251(b)(2) (emphasis added).

¹⁵Id. (emphasis added).

¹⁶Id. (emphasis added). As the Commission is aware, SBC has argued that many aspects of the 1996 Act require the exercise of either exclusive state jurisdiction or of concurrent state and federal jurisdiction (See, e.g., SBC Comments and Reply Comments in CC Docket No. 96-98); however, numbering administration, including number portability, is one area in which “exclusive jurisdiction” is expressly granted to the Commission. See also NYNEX Comments at 11; US West Comments at 5-7.

But see USTA Comments at 18 and fn 13 (“although the Commission has exclusive authority to determine a number portability cost recovery method, to the extent it seeks to exercise that authority in a manner which would require direct increases in rates [as opposed to charges assessed at the direction of a third-party administrator without exercising authority over intrastate charges, etc.],” it must recognize jurisdictional differences).

¹⁷NYNEX Comments at 8.

by the database. An exercise of the Commission's exclusive jurisdiction is appropriate.¹⁸

2. COMPETITIVE NEUTRALITY REQUIRES ALLOCATION AND RECOVERY OF NUMBER PORTABILITY COSTS

As Ameritech comments, ILEC absorption of costs is not competitively neutral and could be confiscatory.¹⁹ The allocation mechanism the Commission ultimately adopts should neither discourage nor impel an end-user to change carriers, but should require the customers of all telecommunications carriers to share equally in the costs.²⁰ While the Commission contends in the First Report and Order that carrier-to-carrier charges that result in an appreciable cost being paid by new entrants cannot meet the competitive neutrality standards for interim number portability, and by extension through the FNPRM, to analogous charges for long-term number portability, neither can the principle of competitive neutrality be met where ILECs pay the bulk of number portability costs, where only ILEC customers are assessed a surcharge, or where ILEC surcharges are larger than those imposed by competing carriers.²¹

As SBC pointed out in its Comments, to be competitively neutral, costs for number

¹⁸State-specific or region-specific cost allocation or recovery administration will prove problematic, at best; this difficulty would be exacerbated still further if administration of cost allocation and recovery is limited to those areas in which number portability is available at any given time. Although the point was raised in a somewhat different context, Airtouch is correct in noting that today's "typical" carrier, particularly the non-ILEC carriers, have multistate and even multinational offerings. Airtouch Comments at 6. Separating costs or revenues among jurisdictions--whether traditional (e.g., state vs. interstate) or non-traditional (e.g., areas with number portability deployment vs. those without)--is an administrative quagmire. See infra.

¹⁹Ameritech Comments at 7.

²⁰CDCA Comments at 11-12 (although, unlike SBC's proposal, infra, CDCA proposed recovery only within number portability areas).

²¹Ameritech Comments at 7. See also BellSouth Comments at 4.

portability (1) must be recovered based upon nationwide EALs, or a similar approach, (2) must be recovered through a common cost fund, and (3) must be linked to a federally mandated, averaged, and uniform end-user charge.²²

3. COSTS SHOULD BE ALLOCATED ON THE BASIS OF NATIONWIDE
“ELEMENTAL ACCESS LINES”

SBC has proposed that number portability costs should be allocated among telecommunications carriers on the basis of nationwide “elemental access lines.”²³ SBC demonstrated the competitive neutrality and administrative ease of such an approach in its Comments. The EAL method does not disadvantage new entrants, nor interexchange carriers, nor ILECs because of any disproportionate distribution of costs, customers, or EALs; it is an equitable mechanism when coupled with an appropriate amortization schedule and best overcomes the shortcomings present in various other types of revenue allocators.

a. Revenues--Gross Or Net--Are A Problematic Allocator

SBC’s EAL allocation mechanism both meets the Commission’s definition of “competitive neutrality” and overcomes the objections that one carrier or another may express with regard to either revenue-based allocators or local exchange access line allocators. First, while several commenters agree with the Commission’s assessment that an allocation based on gross revenues minus charges paid to other carriers is competitively neutral,²⁴ this approach is not competitively neutral. First, as NYNEX points out, “this approach . . . allocate[s] a disproportionate share of

²²See SBC Comments at 13,14.

²³SBC Comments at 7-9.

²⁴See, e.g., Teleport Communications Group (“TCG”) Comments at 4-6; etc.

costs to incumbent LECs and place[s] them at a competitive disadvantage as IXC's enter the intrastate market including local and intraLATA toll.”²⁵ Also, as NYNEX points out, the Commission’s gross-revenue-based allocator not only eliminates access charges IXC's pay from their assessments, but would also permit or require telecommunications carriers to subtract from their gross telecommunications revenues, for purposes of calculating the appropriate allocation, the additional charges paid to LECs or ILECs, including resold service rates and charges for unbundled elements.²⁶ Whether or not NYNEX’s specific calculation on the allocation method it interprets the Commission as endorsing is precisely correct, it is clear that revenue-based allocators are far more subject to manipulation or distortion than is the allocator proposed by SBC.

b. Nationwide, Not Regional or State, Cost Allocation and Recovery Is Appropriate

Even if regional databases are implemented, a national allocation mechanism is necessary to take into account the fact that databases distant to a given carrier will be necessary for the completion of calls from one region to another. Further, carriers with customers located in areas adjacent to the boundaries of a given region or Metropolitan Statistical Area (“MSA”) in which number portability has been deployed may have an extensive need to use that neighboring region’s number portability capabilities. Although logically most of the use of a given database will result from carriers and customers located within a given region, this will not be exclusively true. Number portability costs will be incurred by telephone carriers both inside and outside areas in which number portability is “available,” and for the benefit of consumers in and outside areas with

²⁵NYNEX Comments at 7.

²⁶Id.

number portability. A nationwide cost fund allocation will simplify the process.²⁷ Moreover, a nationwide distribution of costs resolves discrepancies and unfair allocation to carriers that may receive a greater allocation due to geographic reasons.

In addition, measures of financial performance may violate the Commission's own criteria for competitive neutrality "because carriers vary considerably in the gross revenues or profits they derive from a given customer."²⁸ As Airtouch points out,

the use of gross revenues, either unadjusted or adjusted, as the basis for allocating shared number portability costs would not be competitively neutral. The use of unadjusted gross revenues, while perhaps competitively neutral within industry segments having common cost structures, would unduly and improperly favor industry segments with higher capital costs and operating margins. The use of gross revenues minus either payments to other carriers or receipts from other carriers would unfairly favor different industry segments. Total profits should not be used as the basis for allocation because of significant practical problems associated with determining those profits from the relevant domestic telecommunications that are produced by multiproduct and multinational enterprises, as well as the problems created by imperfect competition in the telecommunications market. The use of any of these measures to allocate number portability costs would affect investment decisions and would not be competitively neutral.²⁹

Airtouch's comparison of facilities-based carriers and pure resellers adequately makes the point and is seconded by Bell Atlantic. Bell Atlantic points out that an allocation based upon gross revenues minus payments to other carriers would virtually eliminate a reseller's obligation to pay a fair share of number portability costs. While ILECs would be required to contribute to the costs

²⁷See also Airtouch Comments at 6-7 (the operational structure of telecommunications carriers makes difficult the identification of jurisdictionally "appropriate" revenues).

²⁸Airtouch Comments at 3. See also California Public Utility Commission ("CPUC") Comments at 7-8.

²⁹Airtouch Comments at 7; see also OmnipointComments at 2-4; Sprint Comments at 6-7; CTIA Comments at 3-4; GSA Comments at 6-8.

of number portability based upon total revenues, even from sales of discounted wholesale services, they are prevented from recovering number portability costs from their reseller customers because of the restrictions of Section 252(d)(3). At the same time, the reseller effectively pays a number portability allocation based only upon its net profit.³⁰ As Bell Atlantic establishes, this proposed mechanism would violate competitive neutrality in two ways:

First, in head-to-head competition for the same customer, the Commission's plan would put [an ILEC] at an appreciable cost disadvantage to the reseller.

Second, [an ILEC] would also be at a cost disadvantage when competing with other carriers for the business of other customers, because it has to recover from those customers the contribution it made on the service it sold to the reseller under Section 251(c)(4).³¹

As Airtouch also points out, any allocation based upon "profits" is difficult to administer because of the differing accounting methodologies applicable to the calculation of profits.³² Differences in dominant and non-dominant status, depreciation schedules and methodologies, charges against profits, capital investments, marketing expense strategies, various regulatory expenses, and other carrier-specific and frequently carrier-controlled phenomena may materially affect "profits," and therefore, a carrier's contribution to number portability costs.

Even if potentially illegitimate manipulations of profit calculations were not an issue, identifying relevant revenues against which an allocation can be made is problematic. For example, whether the allocation is based on local versus long distance revenues, domestic versus international revenues, or where regional cost recovery is proposed, in-region or MSA versus out-

³⁰Bell Atlantic Comments at 6-7.

³¹Bell Atlantic Comments at 6-7.

³²Airtouch Comments at 6.

of-region or outside-MSA revenues, all proposed methods are difficult to assess. Moreover, where carriers operate in more than one region or MSA, the deficiencies of revenue-based allocators may be exacerbated by differences in costs among relevant regions.³³

4. SBC'S ALLOCATION AND RECOVERY MECHANISM

SBC has proposed an allocation and recovery mechanism that better allocates the cost of implementing number portability on a competitively neutral basis among all carriers than any other mechanism proposed in this proceeding. Moreover, it incorporates attributes of both access line and working line allocators that are supported by other commenters. The SBC plan has the following features:

- The cost allocation mechanism.
 - Rather than relying upon revenues (gross, retail, or net of payments to other carriers), carriers will be allocated number portability costs based upon "elemental access lines." Under SBC's approach, access lines would be counted by "element," namely, (1) local exchange service, (2) intraLATA toll service, and (3) interLATA toll service. The total number of EALs includes, therefore, the sum of local exchange access lines (including wireline and wireless), intraLATA toll presubscribed access lines, and interLATA toll presubscribed access lines.
 - Ordinarily, there will be three EALs associated with a landline service telephone number (local, intraLATA toll, and interLATA toll); two EALs associated with a Cellular Mobile Radio Service ("CMRS") telephone number (a "local" EAL, and an "interexchange" or "non-local" EAL for calls terminating outside of the CMRS provider's service area); and one EAL for pagers, which have no interexchange PIC.³⁴

³³See Airtouch Comments at 6-7.

³⁴Similarly, other telecommunications carriers that do not have "access lines" may be allocated a portion of number portability costs based upon serving arrangements. For instance, for a competitive access provider (a "CAP"), an assessment should be made for each telephone number or serving arrangement that is providing alternative access services. If a CAP provides access services to a customer with 500 active telephone numbers, the CAP could be assessed an interLATA and an intraLATA EAL for each, resulting in 1000 EALs for that particular

- A carrier may be providing one, two, or three elements to an individual customer per traditional access line depending on the services that carrier provides its end-user customers.³⁵ Number portability costs can then be spread across all telecommunications carriers in a competitively neutral manner based upon the total number of “presubscribed” services that a carrier provides.³⁶
- The reporting of number portability costs. Under SBC’s approach, all nationwide Type 1 and Type 2 costs incurred in the implementation of number portability should be reported to the cost fund administrator.³⁷ To assure that only legitimate number portability costs are allocated, both the activities of the Regional Long-term Number Portability Administrator (the “RLNPA”) (for Type 1 costs) and each reporting telecommunications carrier (for Type 2 costs) will be subjected to specific reporting and auditing criteria.³⁸

customer/carrier relationship.

³⁵A customer subscribing to a landline access line (3 EALs), CMRS (2 EALs), and paging service (1 EAL) would have as many as six EALs.

³⁶SBC’s approach is supported by the CDCA, at least in concept, where it states that “the cost to implement [number portability] might be borne by all telecommunications providers . . . in proportion to the number of lines served by the provider.” CDCA Comments at 15. Although the CDCA would limit its application of the line calculation to areas in which number portabilities implemented, the CDCA acknowledges that this methodology, particularly where amortized over a period of time as suggested by SBC, would ultimately result in the cost causers--namely carriers that wish to obtain in behalf of their new customers ported numbers--bearing the appropriate proportion of the cost of the implementing number portability. See CDCA Comments at 15-16. See also CPUC Comments at 1-3, 7-8; Florida PSC Comments at 4-5; GSA Comments at 7-8.

³⁷While some carriers contend either that only Type 1 costs should be recovered from all telecommunications carriers or that all costs should be absorbed by carriers, most commenters agree that legitimate Type 1 and Type 2 costs should be recovered from all telecommunications carriers. See Ameritech Comments at 7; Frontier Comments at 2; NYNEX Comments at 12; USTA Comments at 12; GSA Comments at 5.

³⁸As set forth in SBC’s comments, the RLNPAs would be designated by the North American Numbering Council (the “NANC”) and would be responsible for establishing, contracting for, and staffing the physical SMS facility. With respect to cost fund administration, the national fund administrator’s responsibilities include: (1) determining the validity of all costs placed in the fund to assure that they are appropriate number portability Type 1 or Type 2 costs; (2) verifying the accumulation of number portability funds and disbursement to the carriers; (3) establishing the actual amount of the number portability end-user charge; (4) assuring all carriers charge their customers the amount established via this process; (5) determining and updating a

- The Per-EAL Carrier and End-User Charges. The total allowed costs in the fund will be divided by the total number of EALs to determine a per-EAL charge to the carrier, which would, in turn be assessed by all carriers on a mandatory, monthly basis to all of their end-user customers for each EAL-subscribed service.³⁹
- EAL-Based Carrier Revenues Used to Reimburse Validated Costs. Revenues from the charge will be collected by the carriers, returned to the fund administrator, and disbursed to the RLNPA on the basis of reported (and validated) number portability costs.

5. THE NATURE OF THE END-USER CHARGE: FEDERAL, UNIFORM, MANDATORY, EXPLICIT

As CDCA urges, the end-user charge should be explicit and uniform among carriers. As CDCA points out, to the extent a cost fund approach to number portability cost recovery is adopted, the charges to consumers should remain constant across all carriers to ensure that the existence of an end-user charge neither prompts nor discourages movement to an alternative

count of the nationwide total EALs; (6) periodically adjusting the end-user charge on the basis of changing costs, or revised EALs; and (7) periodically providing reports to the Commission, as necessary. The NANC will have oversight and control over all the activities and responsibilities of both the RLNPAs and the fund administrator.

Certainly, the idea that a cost fund could lead to wasteful expenditures is not new and is worth consideration. See e.g., AT&T Comments at 14, [etc.]. The SBC plan meets the contentions of these commenters by providing for cost reporting in accordance with strict criteria and subject to audits. Likewise, the idea that costs could be different among states or between regions is pertinent. However, because number portability will be implemented nationwide and essentially simultaneously, any potential cost differences in deployment should be ameliorated by the economy of scale resulting from the simultaneity of deployment itself. See also Comments of Florida PSC at 4-5.

³⁹In its Comments, SBC indicated that preliminary studies show that a monthly number portability charge would be significantly less than \$1.00 per month during the first five-year amortization period. Based on these estimates, the typical monthly number portability charge per landline local exchange access line, which would include three EAL's (local, intraLATA toll, and inter LATA toll) would be less than \$1.00 per month per end user. This information is based on total EALs based upon the total number of SWBT and SBMS access lines. This analysis does not reflect the costs of other carriers which could be higher or lower per EAL, and therefore, have an effect on the calculation of a nationwide EAL end-user charge.

carrier.⁴⁰ Although some commenters contend the costs should simply be reflected in rates, this approach would make implicit a “subsidy” that can and should be known to consumers. The changes to the telecommunications infrastructure necessary to open a collection of networks, originally built on a franchise paradigm, are not without significant cost. As networks are opened, old rate structures are replaced, and new services, such as number portability, are mandated, consumers should be given information about their costs.⁴¹ As NYNEX points out, an explicit charge would remove the number portability cost element as an implicit rate distortion and improve accountability for number portability costs.⁴² Accountability will be improved if, for no other reason, an end-user charge makes consumers aware of number portability costs by a specific line-item on their bills. Contrary to the arguments of some commenters,⁴³ competitively negative inferences cannot be drawn from an explicit, uniform, mandatory, end-user charge such as that proposed by SBC.⁴⁴

C. UNNECESSARY COSTS SHOULD BE AVOIDED

AT&T contends that LECs, incumbents as well as alternative carriers, should load all subscriber numbers in portable NXXs into the regional service management system, whether or not numbers from those NXX’s are actually ported. If the SMS is designed and administered so

⁴⁰CDCA Comments at 23-24. See also Ameritech Comments at 7. (competitive neutrality cannot be met where only ILEC customers are assessed a surcharge or where ILEC surcharges are larger than those imposed by other carriers).

⁴¹See CDCA Comments at 22-23.

⁴²NYNEX Comments at 12.

⁴³See e.g., MCI Comments at 9; ALTS Comments at 4-5; Sprint Comments at 12.

⁴⁴See USTA Comments at 18-19; NYNEX Comments at 12; GSA Comments at 9-10.

that only “porting” subscriber information is placed in the database, AT&T argues, recovery for this function should be structured differently to avoid “penalization” for porting. However, it is unnecessary and inefficient to load all subscriber numbers in portable NXXs into the SMS database. Loading of all numbers would unnecessarily increase the storage capacity requirements of the SMS and would unnecessarily increase SMS costs ultimately borne by consumers.

III. CONCLUSION

Although not expressed explicitly in all comments, there is widespread agreement with the basic assumptions underlying any proposed number portability cost allocation and recovery mechanism. SBC’s position in this docket has been premised on these assumptions, based upon the congressional mandates set forth in the 1996 Act and the Commission’s performance criteria set forth in the First Report and Order. These assumptions are:

- (1) Number portability costs are to be borne by or allocated to “all telecommunications carriers,” which Congress intended to mean LECs (including both ILECs and new entrants), IXCs, CMRS providers, PCS providers, and paging service providers.
- (2) Telecommunications carriers should be allowed to recover the number portability costs they incur. The implementation of number portability is not a routine network upgrade, but a mandated legal requirement, and no carrier should be required to absorb the costs of its implementation.
- (3) The allocation and recovery of number portability costs must be competitively neutral, and therefore, (a) mandatory, uniform, and consistent among all carriers and all end-user customers, and (b) the process by which this allocation and recovery occurs should not encourage or discourage a given customer to change carriers.
- (4) Number portability costs should be recovered on an explicit, rather than implicit, basis. A new subsidy mechanism should not be created, and the costs of number portability should not be included in the cost of other services.
- (5) Number portability implementation is not oriented to a particular jurisdiction, and

therefore, the mechanism by which number portability costs are allocated and recovered is the responsibility of the Commission, as Congress intended.

- (6) In the words of the Commission, all end-user customers benefit from the resulting expansion in the competitive market permitted by the implementation of number portability; it is, therefore, appropriate that the cost allocation and recovery mechanism should be implemented on a nationwide basis.

SBC's proposed mechanism for allocation and recovery of number portability costs is founded upon each of these premises and achieves the Commission's goals of implementing the number portability mandate of the 1996 Act in a competitively neutral manner. Further, SBC's proposal can flexibly accommodate changes in the marketplace as customers change service providers. SBC urges the Commission to adopt its allocation and recovery mechanism.

SBC COMMUNICATIONS INC.

BY: David F. Brown
James D. Ellis
Robert M. Lynch
David F. Brown
175 E. Houston
Room 1254
San Antonio, TX 78205
(210) 351-3478

ATTORNEYS FOR SBC
COMMUNICATIONS INC.

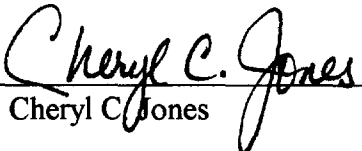
Durward D. Dupre
Mary W. Marks
One Bell Center
Room 3558
St. Louis, MO 63101

ATTORNEYS FOR SOUTHWESTERN BELL
TELEPHONE COMPANY

September 16, 1996

CERTIFICATE OF SERVICE

I, Cheryl C. Jones, hereby certify that copies of REPLY COMMENTS OF SBC COMMUNICATIONS INC. TO FURTHER NOTICE OF PROPOSED RULEMAKING IN CC Docket No. 95-116, have been served by first class United States mail, postage prepaid, on the parties listed on the attached.


Cheryl C. Jones

September 16, 1996

Werner K. Hartenberger, Esq.
Laura H. Phillips, Esq.
J.G. Harrington, Esq.
Dow, Lohnes & Albertson
Ad Hoc Coalition of Competitive Carriers
1255 Twenty-third St., N.W.
Suite 500
Washington, D.C. 20037

Carl W. Northrop, Esq.
E. Ashton Johnston, Esq.
Arch Communications Group
Paul, Hastings, Janofsky & Walker
1299 Pennsylvania Avenue, N.W.
10th Floor
Washington, D.C. 20004-2400

Mark Stachiw, Esq.
AirTouch Paging
Three Forest Plaza
12221 Merit Drive, Suite 800
Dallas, Texas 75251

Charles H. Helein, Esq.
Helein & Associates, P.C.
America's Carriers Telecommunication Association
8180 Greensboro Drive, Suite 700
McLean, Virginia 22102

Larry A. Peck, Esq.
Frank Michael Panek, Esq.
Ameritech
Room 4H86
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025